

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RUBEN CHAVARRIA,

Petitioner,

vs.

MATTHEW CATE et al.,

Respondents.

CASE NO. 11-cv-8 – IEG (RBB)

ORDER:

- (1) ADOPTING IN FULL REPORT AND RECOMMENDATION, [Doc. No. 13];
- (3) GRANTING MOTION TO DISMISS, [Doc. No. 11]; and
- (4) DENYING and DISMISSING PETITION FOR HABEAS CORPUS.

Currently before the Court is Ruben Chavarria (“Petitioner”)’s First Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. [Doc. No. 6.] Pursuant to a plea agreement, Petitioner pleaded guilty to evading an officer and driving under the influence of alcohol causing injury, and he admitted to having a prior conviction and a prior serious felony conviction. He was sentenced to twelve years and four months in state prison as provided by the plea agreement. Petitioner argues that his sentence enhancements were illegally imposed in violation of the rule announced in *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

Respondent filed a Motion to Dismiss, asserting that the First Amended Petition was barred by the one-year statute of limitations set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2244(d)(1), and lodged the relevant portions of the state record.

1 [Doc. No. 11.] Petitioner did not file an opposition to the Motion to Dismiss. The Court referred
 2 the matter to Magistrate Judge Ruben B. Brooks, who issued a Report and Recommendation
 3 concluding that the First Amended Petition was untimely and that neither statutory nor equitable
 4 tolling applied. [Doc. No. 13.] The Magistrate Judge recommended that the Court grant the
 5 Motion to Dismiss and dismiss the First Amended Petition. *[Id.]* The time for filing objections to
 6 the Report and Recommendation has passed without Petitioner filing any objections.

7 **DISCUSSION**

8 The Court reviews *de novo* those portions of the Report and Recommendation to which
 9 objections are made. 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in whole
 10 or in part, the findings or recommendations made by the magistrate judge.” *Id.*

11 In this case, the time for filing objections to the Report and Recommendation has passed
 12 without Petitioner filing any objections. Having reviewed the First Amended Petition,
 13 Respondent’s Motion to Dismiss, the relevant portions of the state record lodged by Respondent,
 14 and the Report and Recommendation, the Court hereby approves and ADOPTS IN FULL the
 15 Report and Recommendation. *See id.*

16 **CONCLUSION**

17 Having reviewed the Report and Recommendation and there being no objections, the
 18 Court: (1) **ADOPTS IN FULL** the Report and Recommendation; (2) **GRANTS** Respondent’s
 19 Motion to Dismiss; and (3) **DENIES and DISMISSES** the First Amended Petition.

20 The Court also denies a certificate of appealability because Petitioner has not “made a
 21 substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(2).

22 **IT IS SO ORDERED.**

23
 24 Dated: November 8, 2011


 25 IRMA E. GONZALEZ, Chief Judge
 26 United States District Court
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